



June 14, 1999

Ms. Mary Barrow Nichols
General Counsel
Texas Workers' Compensation Insurance Fund
221 West 6th Street, Suite 300
Austin, Texas 78701

OR99-1652

Dear Ms. Nichols:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124943.

The Worker's Compensation Insurance Fund (the "Fund") received a request for "a copy of the financial statements for [the "Fund"] for the years 1995 -1998." You indicate that it is not clear to the Fund whether the request is for "public financial documents, or instead seeks some other financial information maintained by the Fund." You asked the requestor to clarify what documents are sought but have not received a reply. Section 552.222(b) of the Government Code provides the following:

(B) If what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request. If a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.

As it appears that there is public information you consider to be responsive to the request for three years of financial statements, we assume that this information has already been provided to the requestor as responsive to the request. Gov't Code § 552.221. If the requestor does not seek more and different information, it may be that the information you consider to be public has fulfilled the request. If the requestor has been provided access to the documents you consider to be public, and the requestor does not seek other documents, the Fund may thus fairly conclude that it has fulfilled its duties under Chapter 552. However, you submitted documents to this office that you contend may be responsive to the request and that you believe are protected from disclosure. Assuming that the requestor truly does seek these additional documents, even though the requestor has not so indicated, we will address your arguments against disclosure of the submitted records.

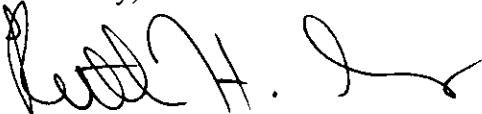
You assert that the submitted records are excepted from disclosure under sections 552.101, 552.103, and 552.110 of the Government Code. Section 552.101 of the Government Code excepts from disclosure information made confidential by law. You assert that section 2 of article 5.76-3 of the Insurance Code, in conjunction with section 552.101, protects the records from disclosure. Section 2(b) of article 5.76-3 provides:

Except as otherwise provided by this subsection, the fund is subject to the open meetings law, Chapter 551, Government Code, and the open records law, Chapter 552, Government Code. The board may hold closed meetings to consider and refuse to release information relating to claims, rates, the fund's underwriting guidelines, and other information that would give advantage to competitors or bidders..

You assert that release of the submitted records would show how the Fund runs its business and could be used by competitors to financially undercut the Fund. *See also* Open Records Letters Nos. 98-0904, 98-1233 (1998) (concerning Fund's functions and application of article 5.76-3). We agree that the submitted financial information, if responsive to the current request, is protected from disclosure under section 2(b) of article 5.76-3 of the Insurance Code.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 124943

¹Because we agree the submitted information is confidential, we need not address your other arguments against disclosure. However, for future reference concerning your section 552.110 argument, we refer you to *Birnbaum v. Alliance of Am. Insurers*, 1999 WL 314976 (Tex. App.—Austin May 20, 1999, no pet. h.).

Encl. Submitted documents, Open Records Letters Nos. 98-0904, 98-1233 (1998)

cc: Mr. Sharik Zatar
Cook, Butler, Doyle & Bradshaw
1221 Lamar, Suite 1300
Houston, Texas 77010-3038
(w/o enclosures; w/Open Records Letters Nos. 98-0904, 98-1233 (1998))



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 18, 1998

Ms. Mary Barrow Nichols
General Counsel
Texas Workers' Compensation
Insurance Fund
Legal Department
221 West 6th Street, Suite 300
Austin, Texas 78701-3403

OR98-1233

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114257.

The Texas Workers' Compensation Insurance Fund (the "fund") received a request for the following information regarding certain named fund managers "with which your fund has present and/or past dealings."

- (1) Date of entering contractual agreement(s);
- (2) Date of cessation of contractual agreement(s), if any, and reasons for cessation of contract(s);
- (3) Performance/rate of return for each year under contract;
- (4) Original fee schedules; and
- (5) Reduced fee schedules, if any, and reasons therefor.

In addition the requestor asked for "a list of your Board members, their addresses, telephone and fax numbers." Because you do not address the requested list, we assume that the fund has released this information to the requestor. You state that the fund will make available to the requestor "information regarding the names of past investment firms with which the [f]und has contracted." However, you assert that the remaining information responsive to this request is protected from disclosure under section 552.101 in conjunction

with section 2(b) of article 5.76-3 of the Insurance Code.¹ You have submitted representative samples of the documents at issue to this office for review.²

We note initially that the fund is required to meet certain financial reporting requirements such as the requirement under section 17(a) of article 5.76-3 for public release of "an independently audited report analyzing the fund's activities and fiscal condition during the preceding fiscal year." *See also* Ins. Code art. 5.76-3, § 2(h) (annual report), § 9 (publication of rates and rating plan), § 13(i) (filing of annual statements). Thus, if any of the requested information has been made public under provisions of the Insurance Code, it may not be withheld from disclosure.³

Section 2(b) of article 5.76-3 of the Insurance Code provides that the fund is generally subject to the Texas Open Records Act and Open Meetings Act, but that the board of directors of the fund "may hold closed meetings to consider and refuse to release information relating to claims, rates, the fund's underwriting guidelines, and other information that would give advantage to competitors or bidders." You assert that release of the requested information would give advantage to the fund's competitors and that the fund thus may withhold the information from disclosure:

Like any insurance company operating in this state, the Fund must carefully choose its investment firms and options in order to maintain its financial viability; investment earnings are material to the overall financial health of an insurer. The Fund's financial program through the use of investments could be undermined by the release of information concerning its private investment firms. Our investment position and strategies could be scrutinized by our competitors, who could then adjust their own investment strategies accordingly, at the expense of the Fund.

The fund was created to (1) serve as a competitive force in the marketplace, (2) guarantee the availability of worker's compensation insurance, and (3) serve as an

¹In its initial brief, the fund also claimed an exception under section 552.110, which the fund has now withdrawn.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³We note that the requestor disputes the fund's contention that the requested information has not been released. This office cannot resolve disputes of fact in the opinion process. *See* Open Records Decision No. 609 (1992).

insurer of last resort. Ins. Code art. 5.76-3, § 2(a). Revenue for the fund to accomplish these goals comes in part from the fund's investments and earnings from those investments. Ins. Code art. 5.76-3, § 13(a). We agree that the information requested by categories 3, 4, and 5 is protected under section 2(b) of article 5.76-3 as information that would give an advantage to competitors.

However, the names of the investment firms is not the type of information that is protected from disclosure by section 2(b) of article 5.76-3. You have not demonstrated how merely knowing the names of investment firms currently used by the fund would give an advantage to competitors. Nor have you demonstrated how disclosure of the dates of entering into and cessation of the contracts between the fund and the investment managers would give an advantage to the fund's competitors or bidders. Thus, you may not withhold from disclosure the type of information requested by categories 1 and 2 of the request under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 114257

Enclosures: Submitted documents

cc: Mr. David Bradley
State Board of Education
1701 N. Congress Avenue
Austin, Texas 78701-1494
(w/o enclosures)

Mr. Robert C. Davis
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909 Fannin, Suite 550
Houston, Texas 77010
(w/o enclosures)



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 7, 1998

Ms. Mary Barrow Nichols
General Counsel
Texas Workers' Compensation
Insurance Fund
221 W. 6th Street, Suite 300
Austin, Texas 78701

OR98-0904

Dear Ms. Nichols:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114061.

The Texas Workers' Compensation Insurance Fund (the "fund") received the following request:

I am requesting information about the private firms that invest any part of the workers' comp fund. I would like to know the name of each firm and, if possible, its track record of performance for the fund. Also, if possible, please provide the names of any firms with which your agency contracted in the past and if poor performance was a reason for nonrenewal of the firm's contract.

You assert that information responsive to this request is protected from disclosure under section 2(b) of article 5.76-3 of the Insurance Code. You also indicate that the requested information may be protected from disclosure under section 552.110 of the Government Code. Representative samples of the documents at issue were provided to this office for review.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note initially that the fund is required to meet certain financial reporting requirements such as the requirement under section 17(a) of article 5.76-3 for public release of "an independently audited report analyzing the fund's activities and fiscal condition during the preceding fiscal year." *See also* Ins. Code art. 5.76-3 § 2(h) (annual report), § 9 (publication of rates and rating plan), § 13 (i) (filing of annual statements). Thus, if any of the requested information has been made public under provisions of the Insurance Code, it may not be withheld from disclosure. We assume, for purposes of this ruling, that the requested information has not been so released.

Section 2(b) of article 5.76-3 of the Insurance Code provides that the fund is generally subject to the Texas Open Records Act and Open Meetings Act, but that the board of directors of the fund "may hold closed meetings to consider and refuse to release information relating to claims, rates, the fund's underwriting guidelines, and other information that would give advantage to competitors or bidders." You assert that release of the requested information would give advantage to the fund's competitors and that the fund thus may withhold the information from disclosure:

Like any insurance company operating in this state, the Fund must carefully choose its investment firms and options in order to maintain its financial viability; investment earnings are material to the overall financial health of an insurer. The Fund's financial program through the use of investments could be undermined by the release of information concerning its private investment firms. Our investment position and strategies could be scrutinized by our competitors, who could then adjust their own investment strategies accordingly, at the expense of the Fund..

The fund was created to (1) serve as a competitive force in the marketplace, (2) guarantee the availability of worker's compensation insurance, and (3) serve as an insurer of last resort. Ins. Code art. 5.76-3, § 2(a). Revenue for the fund to accomplish these goals comes in part from the fund's investments and earnings from those investments. Ins. Code art. 5.76-3, § 13(a). We agree that release of information showing the fund's investment strategies and investment returns is protected under section 2(b) of article 5.76-3 as information that would give an advantage to competitors. However, the names of the investment firms is not the type of information that is protected from disclosure by section 2(b) of article 5.76-3. It has not been demonstrated how merely knowing the names of investment firms used by the fund would give an advantage to competitors.

Some of the investment firms assert that section 552.110 protects their names from disclosure.² Section 552.110 provides an exception to disclosure for (1) trade secrets, and (2) commercial or financial information that is obtained from a person and made privileged

²The other information for which section 552.110 was asserted is confidential under section 2(b) of article 5.76-3.

or confidential by statute or judicial decision. Open Records Decision No. 592 (1991) at 2. However, none of the firms have shown how release of their names implicates a section 552.110 interest. One of the firms argues that release of its name could cause an impairment of its contract with the fund, citing to a contract provision that states:

Subject to the duty of the Investment Manager to comply with applicable law, including any demand of any regulatory or taxing authority having jurisdiction over it, the Investment Manager shall treat as confidential all information pertaining to the Investment Account and the actions of the Investment Manager and the Fund in respect thereof.

Since the Open Records Act is "applicable law" concerning the information at issue, it does not appear that releasing the name of an investment firm would impair the contract. We also note that an entity subject to the Open Records Act may not, by contract, agree to keep information confidential when release is required under the Open Records Act. Attorney General Opinion JM-642 (1987).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 114061

Enclosures: Submitted documents

cc: Ms. Mary Alice Robbins
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(w/o enclosures)